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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8515 OF 2006

Arjundas T. Obhan & others — Petitioners
versus
Thane Municipal Corporation and others — Respondents

Shri G.S.Godbole i/by S.M.Oak for petitioners.

Mr.R.S.Apte for respondents 1 and 2.

Mr.P.K.Dhakephalkar, Sr.Counsel with M.S.Topkar for respondent no.4.

CORAM : A.S.OKA, J.

DATE : 20th April 2007

PC :

1. Heard learned counsel for the petitioners, the learned counsel for the first and second respondents and the counsel for the fourth respondent. The petitioners are the original plaintiffs. The petitioners-plaintiffs are the occupants of a building described in paragraph no.1 of the plaint. The challenge in the suit is to the notice dated 1st June 2006 issued by the first and second respondents stating therein that the building in question is in dangerous and

ruinous condition and it is likely to collapse thereby resulting into loss of human lives. It appears that the first and second respondents also issued notices under sections 264 and 268 of the Bombay Provincial Municipal Corporations Act, 1948. An application for temporary injunction filed by the petitioners was rejected by the Trial Court. In the appeal preferred by the petitioners, the said order has been confirmed.

2. On the last day i.e. on 11th April 2007 the submissions of the learned counsel appearing for the parties were heard. Prima facie, this Court found that there were two conflicting opinions of the experts on record as regards alleged dangerous condition of the building. Therefore, M/s.Nadkarni & Co., Architects on the panel of the Court Receiver, High Court, Bombay were appointed to carry out inspection of the building and to submit a report in terms of the order passed on that day.

3. Accordingly, on 11th April 2007 Shri S.G.Nadkarni along one with Shri V.L.Vartak, Consulting Structural Engineer, visited the building and accordingly a report dated 26th April 2007 has been submitted. The report

indicates that the building "Yeshwant Kunj" consists of two wings namely ‘A’ and ‘B’. The report records that Wing-A was constructed in the year 1964-65 and consists of ground and two upper floors. It is stated that Wing-A has load bearing brick masonary walls supporting beams and slabs of the rooms. The report discloses that Wing-B was constructed in the year 1967-68. it is stated that Wing-B consists of ground and three upper floors. The said wing is of R.C.C. framed construction with R.C.C.columns, beams and slabs. The recommendation in the report is that Wing-A is not in dilapidated condition except for the front access gallery, which can be repaired and restored to stable condition. It is stated that the load bearing walls are in a good condition. Even the beams and slabs are in good condition. There are certain other repairs recommended to the said wing. So far as wing-B is concerned, it is stated that this wing is of R.C.C. frame construction and is in a dilapidated condition due to deterioration of R.C.C. members to a large extent. It is pointed out that the loss of strength is due to deterioration/rusting of reinforcement steel bars which cannot be restored by normal repairs. Heavy repairs virtually amounting to

reconstruction will be required to restore it to stable condition. Therefore, it is recommended that the Wing-B needs to be completely demolished and reconstructed thereafter.

4. The learned counsel appearing for the petitioners has expressed some reservations about the report. The submission of the counsel appearing for the first and second respondents is that the report of one Shri Nakhwa, an expert, was considered by the Courts below which is based on several scientific tests and the report of M/s.Nadkarni & Co. is only on the basis of visual inspection. His contention is that it will be difficult to carry out demolition of only Wing-B and unless Wing-A is demolished, the demolition of Wing-B cannot be carried out. The learned counsel for respondent no.4 has also expressed similar reservations on the report.

5. The learned counsel for the petitioners submitted that if this Court is inclined to permit demolition of Wing-B, the occupants of Wing-B may be permitted to demolish Wing-B on their own. He submitted that the petitioners are ready and willing to carry out repairs to Wing-A. His another submission is that some of the

petitioners are occupying the structures on the ground floor of Wing-B and therefore only upper floors may be demolished as it is not necessary to demolish the ground floor of Wing-B. He submitted that demolition of the plinth is not necessary.

6. I have considered the submissions. It must be noted here that considering the controversy involved, the writ petition will have to be decided finally at the admission stage. As far as the Wing-B is concerned, the opinion of the Consulting Structural Engineer of M/s.Nadkarni & Co. is that Wing-B is in dilapidated condition due to deterioration of R.C.C. members to a large extent and there is a loss of strength due to deterioration/rusting of reinforcement steel bars which cannot be restored by normal repairs. The notices issued by first and second respondents in respect of the said building appear to be consistent with the report of M/s.Nadkarni & Co. only in so far as Wing-B is concerned. There is a categorical opinion recorded that Wing-B is in a dilapidated condition and the demolition of the said building has been recommended. The photographs of Wing-B are annexed to the report. Therefore, insofar as

Wing-B is concerned, it is obvious that the same cannot be protected as there is a likelihood of causing loss of human lives. Shri Godbole appearing for petitioners has pointed out that the occupants of the ground floor of Wing-B are carrying on business and/or running shops. In my considered view, the ad-interim relief which was granted earlier cannot be continued as far as Wing-B is concerned. The expert appointed by this Court has not opined that Wing-B cannot be demolished without demolishing Wing-A. Wing-B is a load bearing structure. Wing-A is a R.C.C. structure. Wing-B was constructed two years after the construction of Wing-A. Both the wings are having separate staircases. However, if the first and second respondents face any genuine difficulty, they can always approach this Court. The request made by the petitioners to allow them to demolish Wing-B cannot be accepted as the said work has to be carried out by the local authority. The petitioners are admittedly not the owners of Wing-B. Considering the nature of the dispute involved, the Corporation can be directed to carry out the demolition work under the supervision of the Consulting Structural Engineer of M/s.Nadkarni & Co.. A reasonable time can be granted to those petitioners who are

occupying Wing-B for vacating their respective premises as they are carrying on their business therein.

7. As far as Wing-A is concerned, the expert has recommended carrying out repairs. The report records that the said wing is not in a dilapidated condition. It is true that the occupants of the building have offered to carry out the repairs. However, third respondent who is admittedly the owner of the building is not before the Court. The submission of the learned counsel for the petitioners was that fourth respondent builder represents third respondent. However, the third respondent being the legal owner will have to be heard before appropriate directions can be issued in respect of Wing-A. It is stated in the report that the front access gallery of Wing-A requires repairs as it is in dilapidated condition. As of today, the demolition of Wing-A cannot be permitted in view of what is stated in the report. An appropriate order will have to be passed as regards Wing-A after notice to the third respondent who is the owner of the property.

8. Place the writ petition for admission on 14th

June 2007. Till further orders, the respondents are restrained from carrying on the work of demolition in respect of Wing-A of the building. Ad-interim relief granted earlier in respect of Wing-B is vacated.

9. As far as Wing-B is concerned, time is granted till 15th May 2007 to those petitioners who are occupying the premises in Wing-B to remove themselves. After 15th May 2007, it will be open for the first and the second respondents to proceed with the demolition of Wing-B of the building. The demolition shall be carried out in presence of the Consulting Structural Engineer of M/s.Nadkarni & Co. and therefore first respondent will fix a date and time for carrying out the work of demolition after consulting M/s.Nadkarni & Co..

10. Shri Godbole appearing for the petitioners has stated that the remuneration payable to M/s.Nadkarni & Co. has been paid by the petitioners. Further remuneration payable to M/s.Nadkarni & Co. will be paid by the petitioners.

11. Issue notice to the third respondent

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returnable on 14th June 2007. Learned advocate for petitioners to serve private notice in addition to service through the Court and submit service affidavit before the returnable date.

12. If the petitioners are offering to carry out the repairs to Wing-A of the building, they are free to file an affidavit to that effect on record.

13. Since contention of first and second respondents is that even Wing-A is in dilapidated condition, it is obvious that those petitioners who are occupying the tenements in Wing-A will continue to occupy the same at their own risk and it will be their responsibility to ensure their own safety and security as well as of their customers and/or visitors to the tenements.

(A.S.OKA, J.)

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUATION SHEET

CIVIL APPLICATION NO.1028 OF 2007
IN
WRIT PETITION NO.8515 OF 2006

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Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions & Registrar's orders	Court's or Judge's order

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Shri Sandesh Patil for applicants.

Shri G.S.Godbole i/by S.M.Iak for petitioners.

Mr.R.S.Apte for respondents 1 and 2.

Mr.P.K.Dhakephalkar, Sr.Counsel with M.S.Topkar for respondent no.4.

CORAM : A.S.OKA, J.
DATE : 20th April 2007

PC :

1. Advocate for the applicants states that the applicants have filed a separate suit and therefore he wants to withdraw the civil application. Application is allowed to be withdrawn and dismissed as such.

(A.S.OKA, J.)